

## **REMARKS**

### **I. Status of the Claims**

Claims 4, 5, and 9 have been cancelled. Claims 8-10 have been renumbered as claims 7-9 in order to correct the incorrect original numbering of claims 8-10. Accordingly, original claims 8-10 will be referred to as claims 7-9. Claim 1 has been amended to include at least 0.5 wt.% of an electrolyte, to replace “suitable carrier” with “aqueous carrier,” to remove the phrase “in particular the ammonium salt of the latter,” and to insert “wt.” before “%”. Support can be found in the Specification, at least at page 6, lines 1-2; page 9, lines 20-24; and page 13, line 27 – page 14, line 10. Claim 2 has been amended to delete the electrolyte as it is now present in claim 1 and to add that the copolymer is an ammonium salt of acryloldimethyltaurate vinylpyrrolidone copolymer. Support can be found in original claim 1. Claim 3 has been amended to insert “wt.” before “%”. Claim 6 has been amended to depend on claim 1 instead of claim 4 in light of the amendments to claim 1. No new matter has been introduced by this Amendment.

### **II. Election of Species Requirement**

The Examiner has maintained the Election of Species requirement, requiring Applicant to elect “the inclusion and type of electrolyte present in the claims.”

Applicants continue to traverse this requirement. For the reasons set forth below, the elected invention, *i.e.*, the ethanolamine of formula I, is allowable over the art cited by the Examiner. Accordingly, Applicants request that the Examiner extend the Examination of electrolyte to cover vitamin C salts.

### **III. Objections to the Specification**

The Examiner has objected to the disclosure stating that it is unclear what the ingredient “Dimethyl MEA” recited in Examples 3-6 is. Applicants note that it is clear from the Specification that Dimethyl MEA refers to dimethylaminoethanol or DMAE. See page 2, lines 22-31. Nevertheless, Applicants have amended Examples 3-6 to change the phrase “Dimethyl MEA” to read “DMAE.” Accordingly, Applicants respectfully request withdrawal of this objection.

#### **IV. Claim Objections**

The Examiner has objected to the claims, correctly noting that the claims as originally filed were incorrectly numbered. Applicants have renumbered claims 8-10 as claims 7-9. Accordingly, Applicants respectfully request withdrawal of this rejection.

#### **V. Claim Rejections – 35 U.S.C. § 112**

##### *A. The Rejection of Claims 1-6, 8 and 10 under 35 U.S.C. § 112, Second Paragraph*

The Examiner has rejected claim 1-6, 8 and 10 under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. The Examiner argues that although the Specification states that all percentages are w/w Applicants should amend the claims to include units. Applicants have amended claim 1 to recite wt.%. The Examiner also objects to the phrase “in particular” in claim 1. Applicants have removed this phrase from the claims.

The Examiner also objects to the phrase “suitable carrier” as allegedly indefinite for failing define “what would render a carrier suitable or unsuitable.” Applicants respectfully traverse this rejection. The Specification states that the carrier “can be any of a variety of skin-compatible materials. Usually the carrier is of aqueous nature and the compositions of the invention are aqueous compositions.” Although Applicants submit that one of ordinary skill in the art would clearly understand which carriers would be suitable, Applicants have amended the claims to recite that the carrier is an aqueous carrier and have deleted the word “suitable.”

For all these reasons, Applicants respectfully request withdrawal of these rejections.

##### *B. The Rejection of Claim 5 under 35 U.S.C. § 112, Second Paragraph*

The Examiner rejected claim 5 under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Applicants respectfully request withdrawal of this rejection as claim 5 has been cancelled.

*C. The Rejection of Claim 65 under 35 U.S.C. § 112, Second Paragraph*

The Examiner rejected claim 6 under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. The Examiner specifically objects to the phrase “effective amount.” Although Applicants do not agree that such terminology is indefinite in light of Applicant’s disclosure, the phrase effective amount has been removed. Accordingly, Applicants respectfully request withdrawal of this rejection.

**VI. Claim Rejections – 35 U.S.C. § 103**

*A. The Rejection of Claims 1-6 and 10 under 35 U.S.C. § 103(a) In View of U.S. Published Patent Application No. US2003/0007985 (“Chevalier et al.”) and U.S. Patent No. 5,425,939 (“Guerrero et al.”).*

The Examiner has rejected claims 1-6 and 10 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Published Patent Application No. US2003/0007985 (“Chevalier et al.”) in view of U.S. Patent No. 5,425,939 (“Guerrero et al.”). Applicants respectfully traverse this rejection.

The Examiner relies upon Chevalier et al. as disclosing compositions with an anti-wrinkle effect in a physiologically acceptable aqueous medium. Specifically, the Examiner relies upon Example 2 as disclosing an anti-aging serum comprising 0.2% xanthan gum, 0.2% PVM/MA decadiene crosspolymer, water and 0.2% triethanolamine. Applicants note that the claims have been amended to recite that the electrolyte is present in the composition at least at 0.5%. There is no teaching or suggestion of the incorporation of at least 0.5% of triethanolamine. Further, there is no teaching or suggestion of the incorporation of sclerotium gum.

Recognizing that Chevalier et al. does not teach or suggest the inclusion of sclerotium gum, the Examiner relies upon Guerrero et al. The Examiner argues that because Guerrero et al. teaches that the use of sclerotium gum in combination with a hydrophobically-modified (meth)acrylate polymer forms an effective thickening system for cosmetic compositions it would have been obvious to one of ordinary skill in the art to sclerotium gum in the anti-aging composition of Chevalier et al. Applicants respectfully disagree.

As noted by the Examiner, Guerrero et al. teaches that many thickeners are known but not all thickening agents are equally effective for any particular type of formulation. See col. 1, lines 21-24. Indeed, Guerrero et al. specifically discusses how electrolytes adversely affect anionic polymeric thickening agents. See col. 1, lines 25-28. Finally, Guerrero et al. states that there are two critical elements of the Guerrero et al. thickening compositions: (1) sclerotium gum and (2) a hydrophobically-modified acrylate or methacrylate polymer. There is absolutely no teaching or suggestion in Guerrero et al. that a combination of sclerotium gum and PVM/MA decadiene crosspolymer would be an effective thickening agent. In fact, in light of the specific discussion in Guerrero et al. that “not all thickening agents are equally effective for any particular type of formulation” one of ordinary skill in the art would not expect that the incorporation of sclerotium gum into the compositions taught by Chevalier et al. would be successful. Accordingly, one of ordinary skill in the art would not have been motivated to incorporate sclerotium gum into the Chevalier et al. anti-aging serum. Further, Guerrero et al. fails to remedy the deficiencies of Chevalier et al. in that there is no teaching or suggestion to increase the amount of triethanolamine to at least 0.5 wt.%. Accordingly, the Examiner has failed to establish a *prima facie* case of obviousness and the rejection should be withdrawn.

B. *The Rejection of Claims 1-6, 8 and 10 under 35 U.S.C. § 103(a) In View of U.S. Published Patent Application No. US2003/0007985 (“Chevalier et al.”), U.S. Patent No. 5,425,939 (“Guerrero et al.”) U.S. Patent No. 5,554,647 (“Perricone”) and U.S. Patent No. 5,441,740 (“Ozlen”).*

The Examiner has rejected claims 1-6, 8 and 10 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Published Patent Application No. US2003/0007985 (“Chevalier et al.”) and U.S. Patent No. 5,425,939 (“Guerrero et al.”) as applied to claims 1-6 and 10 and further in view of U.S. Patent No. 5,554,647 (“Perricone”) and U.S. Patent No. 5,441,740 (“Ozlen”).

Applicants respectfully traverse this rejection at least for the reasons discussed above. Perricone and Ozlen, taken alone or in combination, fail to remedy the deficiencies of Chevalier et al. and Guerrero et al. discussed above. Specifically, there is no teaching or suggestion to increase the amount of triethanolamine to at least 0.5 wt.% nor is there any teaching or suggestion to incorporate sclerotium gum into the Chevalier et al. anti-aging serum.

Accordingly, as the Examiner has failed to establish a *prima facie* case of obviousness, the rejection should be withdrawn.

## **VII. Conclusion**

For the reasons set forth above, Applicants respectfully request withdrawal of all outstanding objections and rejections. If the Examiner feels that a discussion with Applicants' representative would be helpful in resolving the outstanding issues, the Examiner is invited to contact Applicants' representative at the number provided below.

If there are any other fees due in connection with the filing of this response, please charge the fees to our Deposit Account No. 10-0750/J&J5133USNP/JPB. If a fee is required for an Extension of time 37 C.F.R. § 1.136 not accounted for above, such an extension is requested and the fee should also be charged to our Deposit Account No. 10-0750/J&J5133USNP/JPB.

Respectfully submitted,  
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